No. [redacted]

CHARLES E. BUNTON, et al.,

Appellants,

-vs-

JOE T. PATTERSON, et al.,

Appellees.

ON APPEAL FROM A DISTRICT COURT OF THREE JUDGES

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Jurisdictional Statement of Appellants

DENSON RAY
LAWRENCE ASHENDORFER
MARTIN N. ROSS
[redacted]

Attorneys For Appellants

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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967

NO._____

CHARLES E. BUNTON and WILLIAM ROSS, on behalf of themselves and all other persons similarly situated,

Appellants,

-vs-

JOE T. PATTERSON, Attorney General of the State of Mississippi; GROVER GOODWIN, DR. FRANK HEADLEY, ROBERT TEMPLETON, HAROLD BARLAND and ETHAN PORTER, as members of the Board of Education of Claiborne County; JOHN CADE, ORIN R. SEGREST, JR. and L. B. ALLEN, JR., as County Election Commissioners for Claiborne County,

Appellees.

VERNON TOM GRIFFIN, ROBERT COOPER HOWARD, CORNELIUS BROOKS, LUCAS SIMS, ED McGRAW, JR., THOMAS C. JOHNSON and JOHN LOVIE, on behalf of themselves and all other persons similarly situated,

Appellants,

-vs-

JOE T. PATTERSON, Attorney General of the State of Mississippi; W. B. KENNA, W. H. McKENZIE, JR., HOMER E. CHISHOLM, M. L. SMITH and JAMES BARRETT, as members of the Board of Education of Holmes County; MRS. HATTIE MAUDE FARMER, ED WILLIAM MOSES and MRS. JULIETTE GARLAND, as County Election Commissioners for Holmes County,

Appellees.

M-

SETH BALLARD and CHARLES EVERS, on behalf of themselves and all other persons similarly situated,

Appellants,

-vs-

JOE T. PATTERSON, Attorney General of the State of Mississippi; ROBERT LEE WILLIAMS, I. D. STEWART, EMILE GUEDON, TRULY CUPIT and ANON KILLINGSWORTH, as members of the Board of Education of Jefferson County; SAM BULLEN, JOHN JEWELL BALL and RANDOLPH CUPIT, as County Election Commissioners for Jefferson County,

Appellees.

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinions of the United States District Court for the Southern District of Mississippi are not yet reported. The text of said opinions is contained in Appendix A hereto.

JURISDICTION

(1) These proceedings seek declaratory judgments that Section 6271-08 of the Mississippi Code, as amended, comes within

the purview of the Voting Rights Act of 1965 (42 U.S.C. Section 1973) and 42 U.S.C. Section 1971; permanent injunctions against the application and enforcement of said Section 6271-08 by certain county Boards of Education; and permanent injunctions against the appointment of the Superindendent of Education by said county Boards of Education until such time as the Voting Rights Act of 1965 has been complied with, or the procedure followed for opting to make said post appointive as set forth in Section 6271-08 prior to its amendment in 1966.

Jurisdiction was conferred on the court below by 28 U.S.C. Sections 1343(3) and (4), and 2201 and 2202, and by 42 U.S.C. Sections 1971(d) and 1973(j) and (f). A district court of three-judges was required

to be convened by 28 U.S.C. Section 2281 and 42 U.S.C. Section 1973c.

(2) The judgment herein sought to be reviewed was entered in each of the consolidated cases on October 5, 1967, and the Notice of Appeal in each case was filed on November 28, 1967, with the United States District Court for the Southern District of Mississippi.

(3) The Supreme Court has jurisdiction of this direct appeal pursuant to 28 U.S.C. Section 1253 and 42 U.S.C. Section 1973c.

(4) There are no cases specifically dealing with appeal pursuant to 28 U.S.C. Section 1253 or 42 U.S.C. Section 1973c from a three judge court decision pursuant to the Voting Rights Act of 1965 (42 U.S.C. Section 1973). This appeal fits so closely

within the terms of the cited statutes, however, as to need no precedents to sustain jurisdiction. The last sentence of Section 5 of the Voting Rights Act of 1965 (hereinafter "Section 5") provides that "any action under this section shall be heard and determined by a court of three judges . . . and any appeal shall lie to the Supreme Court."

(5) Section 6271-08 of the Mississippi Code of 1942, prior to its amendment in 1966, may be found in volume 5 of the 1964 Cumulative Supplement to the Mississippi Code, at pages 392-93. The 1966 amendment to Section 6271-08 may be found in Volume 5 of the 1966 Cumulative Supplement to the Mississippi Code at pages 436-438.

QUESTIONS PRESENTED

(1) Whether the District Court erred:

(a) In finding that Section 6271-08 of the Mississippi Code, as amended by the 1966 session of the Mississippi Legislature does not come within the purview of and is not covered by Section 5 of the Voting Rights Act of 1965 (42 U.S.C. Section 1973c) so as to require compliance with said Section 5 by the State of Mississippi and the counties involved in each of the cases herein on appeal, prior to enforcing or applying Section 6271-08 as amended; and

(b) In dismissing each of the complaints, thereby denying the relief requested therein.

(2) Whether the November 7, 1967, election in each of the counties herein involved having been held in accordance with Section 6271-08, as amended (i.e., no election for County Superintendent having been held), this Court, if it finds that Section 5 of the Voting Rights Act of 1965 should have been complied with as aforesaid, should order an election of such County Superintendent of Education pursuant to the provisions of Section 6271-08 prior to its amendment in 1966.

STATEMENT OF THE CASE

These cases deal solely with the applicability of Section 5 of the Voting Rights Act of 1965 to Section 6271-08 of the Mississippi Code. Prior to June 17, 1966, every county in Mississippi except one elected its Superintendent of Education

unless it held a special election pursuant to Section 6271-08 to make such post appointive. Jefferson, Claiborne and Holmes Counties, the counties herein, have always elected their Superintendent of Education.

Effective June 17, 1966, the Legislature of Mississippi amended the aforesaid Section 6271-08 to provide that in twelve described counties, including Jefferson, Claiborne and Holmes Counties, the Superintendent of Education must be appointed rather than elected.

The Voting Rights Act of 1965 (42 U.S.C. Section 1973) applies to Mississippi and provides in Section 5 that whenever a State or political subdivision thereof:

> "shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect on November 1,

1964," (42 U.S.C. Section 1973c) such State or political subdivision cannot enforce or apply such change until it has either (1) instituted an action in the United States District Court for the District of Columbia for a declaratory judgment that

> "such qualification, prerequisite, standard, practice or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color" (42 U.S.C. Section 1973c)

and such judgment has been entered, or (2) submitted the change to the Attorney General of the United States and had no objection interposed by the Attorney General within 60 days after such submission.

Neither the State of Mississippi, nor any of its officials, nor Jefferson, Claiborne or Holmes Counties, nor any of

their officials has instituted any action in the United States District Court for the District of Columbia with respect to Section 6271-08 of the Mississippi Code, as amended, nor submitted such amended Section to the Attorney General of the United States.

Plaintiffs in each of the three suits herein seek to have the amendment to Section 6271-08 of the Mississippi Code declared such a change in qualification, prerequisite, standard, practice or procedure, within the purview of Section 5 of the Voting Rights Act of 1965, as to require defendants to comply with Section 5. The District Court in each of the cases held that the amendment did not come within the purview of and is not covered by the Voting Rights Act of 1965, and dismissed

the complaints herein.

SUBSTANTIALITY OF QUESTIONS

The Voting Rights Act of 1965 (42 U.S.C. Section 1973) was designed to prevent states and political subdivisions with a history of avoiding the mandate of the Fifteenth Amendment to the Constitution of the United States from so doing, and to prevent such practices prior to their becoming effective.

The constitutionality of Section 5 has been upheld in South Carolina v. Katzenbach, 383 U.S. 301, 335 (1966):

> "Congress knew that some of the States covered by Section 4(b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees (footnote omitted). Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for

> voting discrimination contained in the Act itself. Under the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner (by enacting Section 5)."

Section 5 is triggered when, by its own provisions, there is any change in "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964 . . . ." It is a fundamental precept of statutory construction that the words of a statute are to be given their ordinary meaning. The quoted words could hardly be broader in scope. This breadth of meaning is reinforced by the definition of "voting" provided by Section 14(c)(1) of the Voting Rights Act of 1965 (42 U.S.C. Section 1973 l(c)(1)) as including "all action necessary to make a vote effective in any primary,

special or general election . . ." (Emphasis added.) A broad, rather than a narrow interpretation, is given further support by the fact that Section 5 is meant to prevent not only denial by a state of the right to vote, but also abridgment of the right to vote.

The legislative history of Section 5 similarly shows that Section 5 was intended to cover a wide range of state provisions. The Attorney-General of the United States testified that "two or three" types of state law could be written out of the section, but "there are precious few, because there are an awful lot of things that could be started for the purposes of evading the Fifteenth Amendment if there is a desire to do so." (Mr. Katzenbach, House Hearings, p. 95) Earlier in the hearing he gave ex-

amples of changes which would not be covered--changes in voting age, residence requirements, and balloting procedures such as changing from paper ballots to machines (he expressed some reservations if the change was from machines to paper). (Mr. Katzenbach, House Hearings, pp. 61-62) In the Senate hearings, the Attorney-General accepted a change by Senator Fong to include in the section the language "standards" and "practices". (Senate Hearings, p. 192) The Senator thought the change would broaden the section to make it all-inclusive. The Attorney-General thought the section all-inclusive even without the change. (Senate Hearings, pp. 191-92)

The overall purpose of the Voting Rights Act and the specific purpose of Section 5 was to eliminate and prohibit

cases of charges which would not be cov-
ered--charges in voting age, residence re-
quirements, and balloting procedures such
as changing from paper ballots to machines
(he expressed some reservations if the
change were from machines to paper). (Mc-
Kuen-Bean, Nonpartisan Bearings, pp. 101-02). In
the Senate hearings, the Attorney-General
argued a change in Section 5 to include
"practices" in the section the language "stand-
ards and practices." (Senate Hearings,
1965). This failed to pass, however, and
in response to the decision to make it all-
inclusive, the Attorney-General thought
the section sub-inclusive even without the
change. (Senate Hearings, pp. 101-02).

The overall purpose of the Voting
Rights Act and the specific purpose of
Section 5 was to eliminate and prohibit

practices and procedures which would perpetuate the effects of discrimination in the election process. In Section 5 Congress sought to prevent state legislatures from raising new barriers of discrimination. Past experience had defined the need for such a remedy.

> "Mr. Katzenbach: The justification is simply this: Our experience in the areas that would be covered by this Bill has been such as to indicate frequently on the part of state legislatures a desire in a sense to outguess the Congress of the United States. I refer, for example to the new voter qualifications that have been put into statutes of Louisiana, Mississippi, and Alabama following the enactment of the 1964 Act which made things more difficult for people to vote . . . .
>
> "The same thing was true, as the Chairman may recall, in Louisiana at the time of the initial school desegregation, where the legislature passed I don't know how many laws in the shortest period of time. Every time the judge issued a decree, the legislature. . . passed a law to

frustrate the decree." (House Hearings, 60.)

In the time it would take for the Government to learn about such newly adopted procedures (Mr. Marshall, House Hearings, p. 72) and litigate their validity, the new statutes would have done their damage (Mr. Katzenbach, Senate Hearings, p. 237). Thus the remedy of Section 5 was, basically, to require federal scrutiny of such statutes in the area of voting before they could be put into effect.

To those familiar with the past history of discriminatory voting legislation in Mississippi, the need for such protection as Section 5 provides is readily apparent. (See, e.g., United States v. Mississippi, 380 U.S. 128, 135-136 (1965)):

"It is apparent that the complaint . . . charged a long standing, care-

> fully prepared, and faithfully observed plan to bar Negroes from voting in the State of Mississippi, a plan which the registration statistics . . . would seem to show had been remarkably successful."

Congress and the courts have consistently noted the pattern of discrimination in Mississippi and the purpose behind its voting legislation. The Supreme Court in commenting on the Voting Rights Act of 1965 in South Carolina v. Katzenbach, supra, said:

> "The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century." Id. at 308.

and again,

> "Congress felt itself confronted by an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution." Id. at 309.

and,

> "(S)ome of the States affected have

> merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration (specifically referring in n. 19 at this point to the Mississippi Legislature)." Id. at 314.

Having proved the overwhelming history of past problems of discrimination and legislative purpose, it is hornbook law that a presumption arises that facts or conditions once proven are deemed to continue to exist unless proven otherwise. Allstate Finance Corp. v. Zimmerman, 330 F.2d 740 (5th Cir. 1964); NLRB v. Piqua Munising Wood Prods. Co., 109 F.2d 552 (6th Cir. 1940); 2 Wigmore, Evidence, Section 437 (3d ed. 1940).

This doctrine has been specifically adopted in discrimination cases as in Cassell v. Texas, 339 U.S. 282, 293 (1950),

merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new decrees designed to problem the existing disparity between white and Negro registration (specifically referring in n. 10 at this point to the Mississippi legislature)."

Id. at [illegible]

Having proved the overwhelming discrimination and [illegible] purpose, it is hornbook law that a preliminary injunction should issue where there is a reasonable probability that the acts complained of will be repeated even though they appear to have been discontinued voluntarily. Unless restrained from doing so, defendants are free to return to their old ways. This conclusion is bolstered by evidence that defendants have not altered their attitudes in the slightest. [illegible] v. Hamman, 330 F.2d 740 (5th Cir. 1964); Walker v. Texas Municipal Power Pooling Co., 352 F.2d 3 (5th Cir. 1965); Wegmore, Evidence, Section 437 (2d ed. 1940).

This doctrine has been specifically adopted in discrimination cases as in Case-

[illegible] v. Dukes, 295 U.S. 183, 293 (1959).

where Mr. Justice Reed stated:

> "If one factor is uniform in a continuing series of events that are brought to pass through human intervention, the law would have to have the blindness of indifference rather than the blindness of impartiality not to attribute the uniform factor to man's purpose."

Thus, in Sellers v. Trussell, 253 F. Supp. 915 (M.D. Ala. 1966), the only case to consider Section 5 to date, in concluding that an Alabama election statute had a purpose of racial discrimination, Judge Johnson gave practical effect to the foregoing presumption when he discussed the history of voting discrimination against Negroes in Alabama and reasoned that:

> "Any determination in this case of legislative motive must be viewed in this light. Viewing Act 536 in such light, leads me . . . to the firm conclusion that its introduction and passage was racially motivated." 253 F. Supp. at 919.

Taking away from the qualified

where Mr. Justice Reed stated:

"If one factor is uniform in a continuing series of events that are brought to pass through human intervention, the jury would have to have the blindness of indifference rather than the blindness of impartiality not to attribute the uniform factor to man's purpose."

Thus, in Seltzer v. Cousens, 253 F. Supp. 915 (D.C. Pa. 1966), the only case to consider Section 5 to date, in concluding that the Alabama election statute did not purpose a racial discrimination, Judge Johnson gave practical effect to the foregoing presumption when he discussed the history of voting discrimination against Negroes in Alabama and reasoned that:

"Any determination in this case of legislative motive must be viewed in this light. Viewing Act 330 in such light, leads me . . . to the firm conclusion that its introduction and passage was racially motivated." 253 F. Supp. at 919.

Taking away from the qualified

electors of certain counties in the state their right to vote for what has always been an elective office is a change in standard, practice or procedure with respect to voting, and is well within the puryiew of Section 5. This is not merely an "abridgment" of the right to vote as was found in Sellers v. Trussell, supra, to be within the contemplation of Section 5, but is an absolute denial of the right to vote with respect to the County Superintendent of Education.

In Sellers Judge Rives concluded that a statute extending the terms of county commissioners in Bullock County, Alabama, from 4 to 6 years was covered by Section 5 and, because Alabama had failed to comply with the requirements of Section 5, was in violation thereof. (Judge

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Supervisor

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(Judge

Johnson found it unnecessary to reach that question, and Judge Grooms dissented.)

Suspension of the right to vote for two years is much less of a change than the abolition of one's right to vote for a particular office indefinitely. If the amendment in question herein is not held to be within the language of the Voting Rights Act of 1965, then the Act will be a dead-letter law in that it will provide no remedy against discrimination and abuse of the elective processes except in the most simple and obvious case.

It takes no great imagination to conceive of the potential for racial discrimination which underlies the amendment to Section 6271-08 of the Mississippi Code, making the formerly elective post of County Superintendent of Education mandatorily appointive

Johnson found it unnecessary to reach that question, and Judge Broome dissented.)

Suspension of the right to vote for two years is much less drastic than the abolition of one's right to vote for a particular office indefinitely. If the amendment in question period is not held to be within the language of the Voting Rights Act of 1965, the Act will be a dead-letter when literacy tests will provide no remedy for discrimination and abuse of the objective standards except in the most simple and obvious cases.

It takes no great imagination to conceive of the potential for racial discrimination which underlies the amendment to Section 241-08 of the Mississippi Code, making the formerly elective post of County Superintendent of Education mandatorily appointive

in 12 of Mississippi's 82 counties.

After the invalidation of the poll tax requirements to voting, and after federal registrars were sent to Mississippi, large numbers of previously unregistered Negroes were able to register to vote. A number of counties in the state now have, or are close to having Negro voting majorities. The County Superintendent of Education is elected on a county-wide basis.

Of the 12 counties elusively described in the amendment herein in question, and which are henceforth required to appoint a Superintendent of Education, ten of the twelve have, or could have, Negro voting majorities. See Appendix C for a breakdown of the counties and population according to the 1960 Federal Decennial Census.

What conceivable legitimate purpose

Mississippi's 82 counties.

After the invalidation of the poll
tax requirements to voting, and after fed-
eral registrars were sent to Mississippi,
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ties. The County Superintendent of Educa-
tion is elected on a county-wide basis.
Counties virtually de-
pending in the assessment burden in question,
which were necessarily required to ap-
point a Superintendent of Education, ten of
the twenty have, or could have, Negro voting
majorities. See Appendix C for a breakdown
of the counties and population according to
the 1960 Federal Decennial Census.

What conceivable Legitimate Purpose

was served in 1966 by singling out twelve counties and legislating away their option to elect or appoint a County Superintendent of Education -- forcing them to appoint rather than elect as they had in the past? This is particularly significant in view of the importance of the office of County Superintendent of Education; as, for example, in integrating and upgrading schools.

It is no answer to say to the Negroes of the county whose Superintendent of Education must now be appointed that he is to be appointed by an elective County Board of Education. The Board of Education in each of these counties is elected by districts, and it does not follow that a county having a county-wide Negro voting majority has a Negro voting majority in each of its districts, or even in a majority of its dis-

tricts.

It is to be kept in mind that the appellants are not asking that the amendment itself be declared unconstitutional. They are merely asking that the state or counties involved comply with the Voting Rights Act of 1965, under which either the Attorney-General of the United States or the District Court for the District of Columbia may make a determination as to the discriminatory purpose and effect of the amendment prior to its becoming effective. The amendment in question is exactly the kind of change which the Voting Rights Act contemplated should be reviewed in order to prevent devious dilution and withdrawal of the right to vote on account of race or color.

It is no accident that Section 5

places the burden of proof of nondiscriminatory purpose and effect upon the covered State. From the foregoing discussion, one can reasonably conclude that Section 6271-08 might well in fact be used to discriminate against the Negro, for racial discrimination in a State such as Mississippi has been so pervasive and has so infected the processes of Government, especially in the area of voting rights. See, e.g., United States v. Mississippi, 359 F.2d 103 (5th Cir. 1966); United States v. Ramsey, 353 F.2d 650 (5th Cir. 1965); United States v. Lynd, 349 F.2d 785 (5th Cir. 1965); United States v. Ward, 345 F.2d 857 (5th Cir. 1965). Therefore, it is fitting that the State of Mississippi assume the burden of demonstrating that Section 6271-08 "does not have the purpose and will not have the

effect of denying or abridging the right to vote on account of race or color."

The scope of the language "voting qualification, or prerequisite to voting, or standard, practice or procedure with respect to voting" has never been construed by an appeal court. An authoritative construction of the above language is essential to the viability of the Voting Rights Act and protection of the right to vote and the strength of the vote.

Respectfully submitted,

January 24, 1968.

DENISON RAY
LAWRENCE ASCHENBRENNER
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississppi

Counsel for Appellants.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

WESTERN DIVISION

CHARLES E. BUNTON, ET AL PLAINTIFFS

VS. CIVIL ACTION NO. 1204W

JOE T. PATTERSON, ET AL DEFENDANTS

O R D E R

This cause came on for hearing on the Complaint, the Answer and argument of counsel, it being stipulated in open court that this hearing would be considered as a final hearing on the merits, and all parties having announced that no factual issues are involved and no testimony or evidence was to be offered, the sole question for determination being whether or not Section 6271-08 of the Mississippi Code of 1942, as amended by the legislature at the regular session of

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF MISSISSIPPI

WESTERN DIVISION

CHARLES H. BURTON, ET AL. PLAINTIFFS

VS. CIVIL ACTION NO. 3:92cv

DEFENDANTS

O R D E R

This cause coming on for hearing on the Complaint, the Answer and Agreement of counsel, as stipulated in open court. The Court finds that this matter should be considered as a Three-Judge Court Hearing, and all parties having waived same, that no factual issues are to be offered, the sole question for determination being whether or not Section 5271-05 of the Mississippi Code of 1942, as amended by the Legislature at the Regular Session of

1966, comes within the purview of or is covered by Section 5 of the Voting Rights Act of 1965, being now Section 1973(c) of Title 42, U.S.C.

It is the opinion of the Court that said Section 6271-08 as amended by the legislature of Mississippi at its regular session of 1966 does not come within the purview of and is not covered by Title 42, Section 1973(c) U.S.C., and that plaintiffs are entitled to no relief in this acion.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the injunction prayed for in this action be, and the same is, hereby, denied and the Complaint is dismissed at the cost of plaintiffs.

ORDERED AND ADJUDGED, this the 5th day of October, 1967.

/s/ HAROLD COX
UNITED STATES DISTRICT JUDGE
Acting For and on Behalf of
The Court

A TRUE COPY, I HEREBY CERTIFY,
ROBERT C. THOMAS, CLERK
BY:
/s/ Ruby L. Short
Deputy Clerk
Dated: 10/8/67

- - - - - - - - - - -

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

VERNON TOM GRIFFIN, ET AL PLAINTIFFS

VS. CIVIL ACTION NO. 4148J

JOE T. PATTERSON, ET AL DEFENDANTS

O R D E R

This cause came on for hearing on the Complaint, and Answer and argument of counsel, it being stipulated in open court that this hearing would be considered as a final hearing on the merits, and all parties hav-

/s/ HAROLD COX

UNITED STATES DISTRICT JUDGE

Acting for and on Behalf of

The Court

ing announced that no factual issues are involved and no testimony or evidence was to be offered, the sole question for determination being whether or not Section 6271-08 of the Mississippi Code of 1942, as amended by the legislature at the regular session of 1966, comes within the purview of or is covered by Section 5 of the Voting Rights Act of 1965, being now Section 1973 (c) of Title 42, U.S.C.

It is the opinion of the Court that said Section 6271-08 as amended by the legislature of Mississippi at its regular session of 1966 does not come within the purview of and is not covered by Title 42, Section 1973(c) U.S.C., and that plaintiffs are entitled to no relief in this action.

IT IS, THEREFORE, ORDERED AND AD-

JUDGED that the injunction prayed for in this action be, and the same is, hereby, denied and the Complaint is dismissed at the cost of plaintiffs.

ORDERED AND ADJUDGED, this the 5th day of October, 1967.

/s/ HAROLD COX
UNITED STATES DISTRICT JUDGE
Acting For and on Behalf of
The Court

- - - - - - - - - -

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

WESTERN DIVISION

SETH BALLARD, ET AL PLAINTIFFS

VS. CIVIL ACTION NO. 1200W

JOE T. PATTERSON, ET AL DEFENDANTS

O R D E R

This cause came on for hearing on the Complaint, the Answer and argument of counsel, it being stipulated in open court that

this hearing would be considered as a final hearing on the merits, and all parties having announced that no factual issues are involved and no testimony or evidence was to be offered, the sole question for determination being whether or not Section 6271-08 of the Mississippi Code of 1942, as amended by the legislature at the regular session of 1966, comes within the purview of or is covered by Section 5 of the Voting Rights Act of 1965, being now Section 1973(c) of Title 42, U.S.C.

It is the opinion of the Court that said Section 6271-08 as amended by the legislature of Mississippi at its regular session of 1966 does not come within the purview of and is not covered by Title 42, Section 1973(c) U.S.C., and that plain-

tiffs are entitled to no relief in this action.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the injunction prayed for in this action be, and the same is, hereby, denied and the Complaint is dismissed at the cost of plaintiffs.

ORDERED AND ADJUDGED, this the 5th day of October, 1967.

/s/ HAROLD COX
UNITED STATES DISTRICT JUDGE
Acting For and on Behalf of
The Court

A TRUE COPY, I HEREBY CERTIFY.
ROBERT C. THOMAS, CLERK
BY:
/s/ Ruby L. Short
Deputy Clerk

Dated: 10/8/67

* * * * * * * * * *

APPENDIX B

Section 6271-08, as herein relevant, before amendment read:

> "(b) Notwithstanding the provisions of subsection (a) hereof, the office of county superintendent of education may be made appointive in any county in the manner herein provided. Upon the filing of a petition signed by not less than twenty per cent (20%) of the qualified electors of such county, it shall be the duty of the board of supervisors of such county, within sixty (60) days after the filing of such petition, to call a special election at which there shall be submitted to the qualified electors of such county the question of whether the office of county superintendent of education of said county shall continue to be elective or shall be filled by appointment by the county board of education of said county. The order calling such special election shall designate the date upon which same shall be held and a notice of such election, signed by the clerk of the board of supervisors, shall be published once a week for at least three (3) consecutive weeks in at least one newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior

to the date fixed for such election and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper is published in such county then such notice shall be given by publication of same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one (21) days next preceding such election at three (3) public places in such county, one of which shall be at the door of the county courthouse in each judicial district. Said election shall be held, as far as is practicable, in the same manner as other elections are held in such county and all qualified electors of the county may vote therein. If a majority of such qualified electors who vote in such election shall vote in favor of the appointment of the county superintendent of education by the county board of education then, at the expiration of the term of the county superintendent of education then in office, the county superintendent of education of said county shall not be elected but shall thereafter be appointed by the county board of education for a term of not more than four (4) years; otherwise, said office

shall remain elective. No special election shall be held in any county under the provisions of this subsection more often than once in every four (4) years, and no change from the elective to the appointive method of the selection of the county superintendent of education shall become effective except at the expiration of the term of the county superintendent of education in office at the time such election is held.

"In any county of the first class lying wholly within a levee district and within which there is situated a city of more than forty thousand (40,000) population according to the last decennial federal census the county superintendent of education shall hereafter be appointed by the county board of education as above provided."

Following its amendment in 1966, Section 6271-08, as herein relevant, reads:

"(b) Notwithstanding the provisions of subsection (a) hereof, the office of county superintendent of education may be made appointive in any county in the manner herein provided. Upon the filing of a petition signed by not less than twenty per cent (20%) of the qualified electors of such county, it shall be the duty of

the board of supervisors of such county, within sixty (60) days after the filing of such petition, to call a special election at which there shall be submitted to the qualified electors of such county the question of whether the office of county superintendent of education of said county shall continue to be elective or shall be filled by appointment by the county board of education of said county. Provided, however, that where a Class Three county having an area in excess of eight hundred twenty-five (825) square miles has a county unit school system comprising less than an entire county, the petition shall only be signed by electors residing within the county unit school district and only electors of said district shall vote on the proposition of appointing the county superintendent of education. The order calling such special election shall designate the date upon which same shall be held and a notice of such election, signed by the clerk of the board of supervisors, shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for such election and the last publication

shall be made not more than seven (7) days prior to such date. If no newspaper is published in such county then such notice shall be given by publication of same for the required time in some newspaper having a general circulation in such county and, in addition, by posting a copy of such notice for at least twenty-one (21) days next preceding such election at three (3) public places in such county, one (1) of which shall be at the door of the county courthouse in each judicial district. Said election shall be held, as far as is practicable, in the same manner as other elections are held in such county and all qualified electors of the county may vote therein. If a majority of such qualified electors who vote in such election shall vote in favor of the appointment of the county superintendent of education then, at the expiration of the term of the county superintendent of education then in office, the county superintendent of education of said county shall not be elected but shall thereafter be appointed by the county board of education for a term of not more than four (4) years; otherwise, said office shall remain elective. No special election shall be held in any county under the provisions of this subsection more often than once in every four (4) years, and

no change from the elective to the appointive method of the selection of the county superintendent of education shall become effective except at the expiration of the term of the county superintendent of education in office at the time such election is held.

"In any county of the first class lying wholly within a levee district and within which there is situated a city of more than forty thousand (40,000) population according to the last decennial Federal census the county superintendent of education shall hereafter be appointed by the county board of education as above provided.

"In any county of the second class wherein Interstate Highway 55 and State Highway 22 intersect and which is also traversed in whole or in part by U. S. Highways 49 and 51, and State Highways 16, 17 and 43 and the Natchez Trace; in any Class Four county having a population in excess of twenty-five thousand (25,000) according to the 1960 Federal census, traversed by U. S. Interstate Highway 55 and wherein Mississippi Highways 12 and 17 intersect;[1] in any county created after 1916 through which the Yazoo River flows; in any Class Four county having a land area of six hundred ninety-five (695) square miles, bordering on

the State of Alabama, wherein the Treaty of Dancing Rabbit was signed and wherein U. S. Highway 45 and Mississippi Highway 14 intersect; in any county bordering on the Mississippi River wherein lies the campus of a land-grant institution or lands contiguous thereto owned by the institution;[2] in any county lying within the Yazoo-Mississippi Delta Levee District, bordering upon the Mississippi River, and having a county seat with a population in excess of twenty-one thousand (21,000) according to the Federal census of 1960; in any county having a population of twenty-six thousand seven hundred fifty-nine (26,759) according to the 1960 Federal census, and wherein U.S. Highway 51 and U.S. Highway 84 and the Illinois Central Railroad and the Mississippi Central Railroad intersect; in any Class Three county wherein is partially located a national forest and wherein U.S. Highway 51 and Mississippi Highway 28 intersect, with a 1960 Federal census of twenty-seven thousand fifty-one (27,051) and a 1963 assessed valuation of $16,692,304.00; the county superintendent of education hereafter shall be appointed by the county board of education.

"In any county bordering on the Gulf of Mexico or Mississippi Sound, having therein a test facility operated by the National Aeronautics and Space Administration, the county superintendent of education shall be appointed by the county board of education beginning January 1, 1972."

1. Underlined portion is description fitting Holmes County.

2. Underlined portion is description fitting Jefferson and Claiborne Counties.

APPENDIX C

Statutory Language	County	Population
"Any county of the first class lying wholly within a levee district and within which there is situated a city of more than forty thousand (40,000) population according to the last decennial federal census;"	Washington	35,239 White 43,097 Negro 302 Other
"In any county of the second class wherein Interstate Highway 55 and State Highway 22 intersect and which is also traversed in whole and in part by U.S. Highways 49 and 51 and State Highways 16, 17 and 43 and the Natchez Trace;"	Madison	9,267 White 23,630 Negro 7 Other
"in any Class Four county having a population in excess of twenty-five thousand (25,000)	Holmes	7,595 White 19,488 Negro 13 Other

Statutory Language	County	Population
according to the 1960 Federal census, traversed by U.S. Interstate Highway 55 and wherein Mississippi Highways 12 and 17 intersect;"		
"in any county created after 1916 through which the Yazoo River flows;"	Humphreys	5,758 White 13,300 Negro 35 Other
"in any Class Four county having a land area of six hundred ninety-five (695) square miles; bordering on the State of Alabama, wherein the Treaty of Dancing Rabbit was signed and wherein U.S. Highway 45 and Mississippi Highway 14 intersect;"	Noxubee	4,724 White 12,064 Negro 38 Other
"in any county bordering on the Mississippi River wherein lies the	Claiborne and Jefferson	Claiborne 2,600 White 8,239 Negro 6 Other

Statutory Language	County	Population
campus of a land grant institution or lands contiguous thereto owned by the institution;"	Jefferson	2,489 White 7,652 Negro 1 Other
"in any county lying within the Yazoo Mississippi Delta Levee district, bordering upon the Mississippi River, and having a county seat with a population in excess of twenty-one thousand (21,000) according to the Federal census of 1960;"	Coahoma	14,630 White 31,440 Negro 142 Other
"in any county having a population of twenty-six thousand, seven hundred fifty-nine (26,759) according to the 1960 Federal census and wherein U.S. Highway 51 and U.S. Highway 84 and the Illinois Central Railroad and the Mississippi Central Railroad intersect;"	Lincoln	18,407 White 8,340 Negro 12 Other

Statutory Language	County	Population
"in any Class Three county wherein is partially located a national forest and wherein U.S. Highway 51 and Mississippi Highway 28 intersect, with a 1960 Federal census of twenty-seven thousand fifty-one (27,051) and a 1963 assessed valuation of $16,692,304.00;"	Copiah	12,992 White 14,057 Negro 1 Other
"in any county bordering on the Gulf of Mexico or Mississippi Sound having therein a test facility operated by the "National Aeronautics and Space Administration," the superintendent shall be appointed beginning January 1, 1972."	Hancock	11,784 White 2,246 Negro 9 Other

CERTIFICATE OF SERVICE

I, hereby certify that I have this day mailed via United States mail, postage prepaid, a copy of the foregoing Jurisdictional Statement of Appellants to:

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